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B. Targoff, John D. Harkey, Jr., Robert V.  
10 Lapenta, Mark H. Rachesky, M.D. and  
James D. Dondero  
11

12 UNITED STATES DISTRICT COURT  
13 SOUTHERN DISTRICT OF CALIFORNIA  
14

15 CHARLES GRAHAM, Derivatively )  
on Behalf of Nominal Defendant LEAP )  
16 WIRELESS, INTERNATIONAL, INC., )

17 Plaintiff, )

18 v. )

19 S. DOUGLAS HUTCHESON, AMIN )  
KHALIFA, GRANT BURTON, DEAN M. )  
20 LUvisa, MICHAEL B. TARGOFF, JOHN D. )  
HARKEY, JR., ROBERT V. LAPENTA, MARK )  
21 H. RACHESKY, M.D., and JAMES D. )  
DONDERO, )

22 Defendants, )  
23 )  
24 and )  
25 )

26 LEAP WIRELESS INTERNATIONAL, INC., )  
27 )  
28 )

Nominal Defendant. )  
\_\_\_\_\_)

CASE NO.: 08-CV-0246-L-NLS

**INDIVIDUAL DEFENDANTS'  
NOTICE OF MOTION AND  
MOTION TO DISMISS  
PLAINTIFF'S VERIFIED  
SHAREHOLDER DERIVATIVE  
COMPLAINT**

Date: August 4, 2008  
Time: 10:30 a.m.  
Dept: 14  
Before: The Hon. M. James Lorenz

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on August 4, 2008, at 10:30 a.m., or as soon thereafter as  
 3 the matter may be heard, before the Honorable M. James Lorenz, located at the United States  
 4 Courthouse, 940 Front St., San Diego, California, Courtroom 14, defendants S. Douglas  
 5 Hutcheson, Amin Khalifa, Grant Burton, Dean M. Luvisa, Michael B. Targoff, John D. Harkey,  
 6 Jr., Robert V. Lapenta, Mark H. Rachesky, M.D., and James D. Dondero (collectively, the  
 7 "Individual Defendants") will and do hereby move pursuant to Rules 9(b) and 12(b)(6) of the  
 8 Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 (the  
 9 "Reform Act") and applicable Delaware law for an order dismissing plaintiff's Verified  
 10 Shareholder Derivative Complaint on the grounds that Plaintiffs have failed to state a claim  
 11 against any of the Individual Defendants. Specifically, among other deficiencies: (1) plaintiff's  
 12 Section 10(b) claim fails to satisfy the heightened pleading requirements of the Reform Act and  
 13 Rule 9(b); (2) plaintiff's allegations in support of the breach of fiduciary duty claim fail to state a  
 14 claim; and (3) plaintiff fails to state a claim for unjust enrichment.

15 This motion is based upon this Notice of Motion and Motion; the accompanying  
 16 Memorandum of Points and Authorities; the Request for Judicial Notice; the Declaration of  
 17 Diane M. Walters and the exhibits thereto; the pleadings, records and papers on file in this  
 18 action; and such additional evidence and oral argument that the Court may consider and other  
 19 matters properly before the Court.

20 Dated: June 2, 2008

Respectfully submitted,  
 WILSON SONSINI GOODRICH & ROSATI  
 Professional Corporation  
 Keith E. Eggleton  
 Diane M. Walters  
 L. David Nefouse

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